

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTESTS OF
ECONOMY FOOD & GAS MART, INC. TO
CRS ASSESSMENT NOS. 4130388 THROUGH 4130423 AND
CIT ASSESSMENT ISSUED UNDER LETTER ID L0964308992**

No. 05-16

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on August 2, 2005, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Jeffrey W. Loubet, Special Assistant Attorney General. Economy Food & Gas Mart, Inc. (“Taxpayer”) was represented by Parbakar Sharma, its sole shareholder and corporate officer. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. During tax years 1999 through 2002, the Taxpayer operated a gasoline station and convenience store on leased premises in Albuquerque, New Mexico.
2. At the time Parbakar Sharma, the Taxpayer’s sole shareholder and corporate officer, formed the corporation, he hired Sanchez Bookkeeping to prepare the corporation’s tax returns and advise him on tax matters.
3. In 2002, the Department conducted a field audit of the Taxpayer, during which the auditor discovered that the Taxpayer had not paid gross receipts tax on its sales of gasoline.
4. Neither Mr. Sharma nor his bookkeeper understood that the exemption provided in NMSA 1978, § 7-9-26 for receipts from the sale of gasoline was only available to taxpayers

who purchased gasoline from distributors who had paid the gasoline tax imposed by NMSA 1978, § 7-13-3.

5. Because the Taxpayer purchased its gasoline from an Indian distributor who was not required to pay the gasoline tax, the Taxpayer was liable for gross receipts tax on his receipts from selling gasoline to the public.

6. The auditor found that the Taxpayer did not have adequate records of its gasoline sales during the audit period. As a result, the auditor used third-party records obtained from the Taxpayer's vendors to determine the volume of gasoline sales and the amount of gross receipts tax due for the period under audit.

7. The auditor used this same information to determine the amount of corporate income tax due for the audit period.

8. On September 8, 2003, the Department issued an assessment against the Taxpayer in the total amount of \$255,516.82, representing corporate income tax and interest due for tax years 1999, 2000, and 2001.

9. On September 11, 2003, the Department issued an assessment against the Taxpayer in the total amount of \$969,812.74, representing gross receipts tax and interest due for reporting periods November 1999 through October 2002.

10. On October 2, 2003, the Taxpayer filed written protests to the Department's assessments.

DISCUSSION

The Taxpayer does not dispute its legal liability for the tax and interest assessed by the Department. Parbakar Sharma, the Taxpayer's sole shareholder and corporate officer, attended the

hearing to explain that he had little knowledge of business matters and had relied on Sanchez Bookkeeping to prepare his tax returns and advise him on tax matters. Mr. Sharma said that he did not know he was supposed to pay gross receipts tax on his sales of gasoline and did not take this cost into account in setting his prices. As a result, his business is no longer in operation.

While it is unfortunate that Mr. Sharma did not receive better advice from his bookkeeper, a taxpayer's lack of knowledge does not excuse him from payment of taxes due under New Mexico's tax laws. Nor does the Taxpayer's insolvency provide a basis for abating the assessments against it. Department Regulation 3.1.6.14 NMAC specifically states that the Secretary "may not compromise a taxpayer's liability because of the taxpayer's inability to pay." In *State ex rel. Taylor v. Johnson*, 1998-NMSC-015 ¶ 022, 961 P.2d 768, 774-775, the New Mexico Supreme Court made the following observations concerning the power of administrative agencies:

Generally, the Legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform. *See State ex rel. State Park & Recreation Comm'n v. New Mexico State Authority*, 76 N.M. 1, 13, 411 P.2d 984, 993 (1966). The administrative agency's discretion may not justify altering, modifying or extending the reach of a law created by the Legislature....

The Legislature has not granted the Department or its Hearing Officer the authority to abate or adjust tax assessments based on the financial or personal situations of individual taxpayers. The Hearing Officer's jurisdiction is limited to determining whether a taxpayer is legally liable for the tax and interest at issue.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the assessments of gross receipts and corporate income taxes issued against it, and jurisdiction lies over the parties and the subject matter of this protest.

B. NMSA 1978, § 7-1-17 provides that any assessment of taxes made by the Department is presumed to be correct, and the Taxpayer has not met its burden of coming forward with evidence and legal arguments to show that the Department's assessments are incorrect.

C. The Hearing Officer does not have authority to override the provisions of New Mexico's tax laws to relieve the Taxpayer of its statutory obligation for payment of gross receipts and corporate income taxes due to the state.

For the foregoing reasons, the Taxpayer's protest IS DENIED.

DATED August 4, 2005.